IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 7TH AUGUST 2007 / 16TH SRAVANA 1929

WP(C).No. 9754 of 2007(J)

PETITIONERS:
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1. T.C.VISHWANATH,
MOOLEPARAMBIL HOUSE, PAKKIL P.O., KOTTAYAM.

2. T.R.RAJESH, MOOLEPARAMBIL HOUSE,
PAKKIL P.O., KOTTAYAM.

BY ADV. SRI.M.P.MADHAVANKUTTY

RESPONDENTS:
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1. NATTAKOM GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY.

2. THE ENIRONMENTAL ENGINEER,
KERALA STATE POLLUTION CONTROL BOARD,
DISTRICT OFFICE, KOTTAYAM.

3. PARAMESHWARAN,PARVATHI MANDIRAM,
PAKKOL P.O., KOTTAYAM.

R3 BY ADV. SRI.NELSON J.MANAYIL
SRI.R.SAJEEV
R1 BY SRI.C.S.SUNIL
SMT.SARITHA SUNIL
R2 BY ADV. SHRI M.K. CHANDRAMOHAN DAS, SC.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. M. JOSEPH, J.

W.P.C. NO. 9754 OF 2007 J

Dated this the 7th August, 2007

JUDGMENT

The prayers in the Writ Petition are as follows:

> *"i) Issue a writ of certiorari and quash Exts.P10 and P11 stop memos issued by the 1st respondent as illegal and arbitrary.*
>
> *ii) Issue a declaration that the 1st respondent has deemed to have allowed Exhibits P8 and P9 licence applications preferred by petitioners.*
>
> *iii) Issue a writ of mandamus directing the 1st respondent to grant licence on Exts.P8 and P9 licence applications."*

2. Case of the petitioners, in brief, is as follows:

First petitioner is the Proprietor of a SSI Unit. He is doing the work of wooden furnitures and allied works. Second petitioner is conducting a car workshop. Both are located in the first respondent Panchayat. First petitioner was issued with

Ext.P1 licence for the period 1994 - 1995 and Ext.P2 licence for the period 2003 - 2004. The third respondent filed a petition before the Ombudsman as Ext.P3. The main complaint is that the establishments run by the petitioners are causing sound and air pollution. Licence was not renewed. It was kept pending. Exts.P4 and P5 are stop memos issued as per the direction of the Ombudsman in OP No.705/04. The units were stopped functioning after Exts.P4 and P5. Thereafter, the petitioners have applied and obtained consent to operate as Exts.P6 and P7. Exts.P6 and P7 are valid till 30.6.2009. Thereafter, the petitioners have filed applications for licence for the period 2007 - 2008, dated 1.1.2007, as Exts.P8 and P9. No orders have been passed. Violation of Section 236(3) of the Kerala Panchayat Raj Act is alleged. It is the case of the petitioners that thereunder their applications should be treated as allowed. It is while so that Exts.P10 and P11 stop memos are issued.

3. Learned counsel for third respondent has filed a detailed Counter Affidavit producing various documents as

Exts.R3(A) to R3(O).

4. I heard the learned counsel appearing for the parties. This Court has already granted stay of coercive action pursuant to Exts.P10 and P11. Applications for licence for the year 2007 - 2008 appear to have been filed by the petitioner as evidenced by Exts.P8 and P9. They have also procured consent to operate as evidenced by Exts.P6 and P7. The consent is valid till the year 2009. No orders have been passed on the applications for licence. I feel that a decision should be taken on the applications for licence in accordance with law, with an opportunity of hearing to the petitioners and also the third respondent. The Panchayat will certainly bear in mind that the mere fact that the Pollution Control Board has issued consent to operate will not by itself oblige the Panchayat to issue licence. Of course, the third respondent has a case that the very consent itself was obtained fraudulently. If the third respondent has such a case, it is open to the third respondent to challenge the consent in the appropriate Forum. As things stand, I feel that

there should be a direction to the respondent Panchayat to consider and take a decision on Exts.P8 and P9 as aforesaid, after hearing the petitioners and also the third respondent, in accordance with law. Accordingly, the Writ Petition is disposed of directing the first respondent to consider and take a decision on Exts.P8 and P9 after affording an opportunity of hearing to the petitioner and also the third respondent, in accordance with law. It is open to the third respondent to urge all his objections against the grant of licence and the first respondent will consider and take an appropriate decision in accordance with law. A decision shall be taken as aforesaid within one month from the date of receipt of a copy of this Judgment. I also make it clear that I leave open the right of the third respondent to challenge Exts.P6 and P7 consent in the appropriate Forum. The interim order will continue till a decision is taken.

K. M. JOSEPH, JUDGE

kbk.